

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

139Q0408

HOUSE BILL NO. 1127

Introduced by: Representatives Lange and Vanderlinde

1 FOR AN ACT ENTITLED, An Act to provide safe legal access to medical marijuana for certain
2 qualified persons.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Cardholder," any qualifying patient or any designated caregiver who has been issued
6 and possesses a valid registry identification card;

7 (2) "Debilitating medical condition," one or more of the following:

8 (a) Cancer, glaucoma, positive status for human immunodeficiency virus,
9 acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral
10 sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the
11 treatment of these conditions;

12 (b) A chronic or debilitating disease or medical condition or its treatment that
13 produces one or more of the following: cachexia or wasting syndrome; severe
14 pain; severe nausea; seizures, including those characteristic of epilepsy; or
15 severe and persistent muscle spasms, including those characteristic of multiple



1 sclerosis; or

2 (c) Any other medical condition or its treatment approved by the department, as
3 provided for in section 19 of this Act;

4 (3) "Department," the Department of Health;

5 (4) "Enclosed, locked facility," any closet, room, greenhouse, or other enclosed area
6 equipped with locks or other security devices that permit access only by a registered
7 designated caregiver or registered qualifying patient;

8 (5) "Marijuana," as defined in § 22-42-1;

9 (6) "Medical use," the acquisition, possession, cultivation, manufacture, use, delivery,
10 transfer, or transportation of marijuana or paraphernalia relating to the administration
11 of marijuana to treat or alleviate a registered qualifying patient's debilitating medical
12 condition or symptoms associated with the patient's debilitating medical condition;

13 (7) "Practitioner," any person who is licensed with authority to prescribe drugs;

14 (8) "Qualifying patient," any person who has been diagnosed by a practitioner as having
15 a debilitating medical condition;

16 (9) "Registry identification card," a document issued by the department that identifies a
17 person as a registered qualifying patient or registered designated caregiver;

18 (10) "Unusable marijuana," marijuana seeds, stalks, seedlings, and unusable roots. The
19 term, seedling, means a marijuana plant that has no flowers and is less than twelve
20 inches in height and less than twelve inches in diameter;

21 (11) "Usable marijuana," the dried leaves and flowers of the marijuana plant and any
22 mixture or preparation thereof, but does not include the seeds, stalks, and roots of the
23 plant and does not include the weight of any nonmarijuana ingredients combined
24 with marijuana and prepared for consumption as food or drink;

(12) "Visiting qualifying patient," a patient with a debilitating medical condition who is not a resident of South Dakota or who has been a resident of South Dakota less than thirty days;

(13) "Written certification," a document signed by a practitioner, stating that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. A written certification shall be made only in the course of a bona fide practitioner-patient relationship after the practitioner has completed a full assessment of the qualifying patient's medical history. The written certification shall specify the qualifying patient's debilitating medical condition.

Section 2. For the purposes of this Act, a designated caregiver is any person who is at least twenty-one years of age, who has agreed to assist with a patient's medical use of marijuana, and who has never been convicted of a felony offense. For the purposes of this section, a felony offense does not include:

(1) An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed ten or more years earlier; or

(2) An offense that consisted of conduct for which this Act would likely have prevented a conviction, but the conduct either occurred prior to the enactment of this Act or was prosecuted by an authority other than this state.

Section 3. No qualifying patient who has been issued and possesses a registry identification card is subject to arrest, prosecution, or penalty in any manner, including any civil penalty or disciplinary action by a court or occupational or professional licensing board, and may not be denied any right or privilege, for the medical use of marijuana in accordance with this Act, if

1 the qualifying patient possesses an amount of marijuana that does not exceed twelve marijuana
2 plants and six ounces of usable marijuana. The plants shall be kept in an enclosed, locked
3 facility, unless the plants are being transported because the qualifying patient is moving or if the
4 plants are being transported to the qualifying patient's or designated caregiver's property. This
5 section does not apply to the provisions of sections 8 to 11, inclusive, of this Act.

6 Section 4. No designated caregiver who has been issued and possesses a registry
7 identification card is subject to arrest, prosecution, or penalty in any manner, including any civil
8 penalty or disciplinary action by a court or occupational or professional licensing board, and
9 may not be denied any right or privilege, for assisting a qualifying patient to whom the
10 designated caregiver is connected through the department's registration process with the medical
11 use of marijuana in accordance with this Act, if the designated caregiver possesses an amount
12 of marijuana that does not exceed twelve marijuana plants and six ounces of usable marijuana
13 for each qualifying patient to whom the designated caregiver is connected through the
14 department's registration process. The plants shall be kept in an enclosed, locked facility, unless
15 the plants are being transported because the designated caregiver is moving or if the plants are
16 being transported to a designated caregiver's or a qualifying patient's property. This section does
17 not apply to the provisions of sections 8 to 11, inclusive, of this Act.

18 Section 5. Any registered designated caregiver or registered qualifying patient may possess
19 a reasonable amount of unusable marijuana, including up to twelve seedlings, which may not
20 be counted toward the limits in section 3 or 4 of this Act.

21 Section 6. There is a rebuttable presumption that a qualifying patient or designated caregiver
22 is engaged in the medical use of marijuana in accordance with this Act if the qualifying patient
23 or designated caregiver:

24 (1) Is in possession of a registry identification card; and

1 (2) Is in possession of an amount of marijuana that does not exceed the amount allowed
2 under this Act.

3 The presumption may be rebutted by evidence that conduct related to marijuana was not for
4 the purpose of treating or alleviating the qualifying patient's debilitating medical condition or
5 symptoms associated with the debilitating medical condition, pursuant to this Act.

6 Section 7. No cardholder is subject to arrest, prosecution, or penalty in any manner,
7 including any civil penalty or disciplinary action by a court or occupational or professional
8 licensing board, and may not be denied any right or privilege, for giving marijuana to a
9 registered qualifying patient or a registered designated caregiver for the registered qualifying
10 patient's medical use if nothing of value is transferred in return, or for offering to do the same,
11 if the person giving the marijuana does not knowingly cause the recipient to possess more
12 marijuana than is permitted by this Act.

13 Section 8. No school may refuse to enroll, or otherwise penalize, a person solely for the
14 person's status as a registered qualifying patient or a registered designated caregiver, unless
15 failing to do so would put the school in violation of federal law or regulation.

16 Section 9. No landlord may refuse to lease to, or otherwise penalize, a person solely for the
17 person's status as a registered qualifying patient or a registered designated caregiver, unless
18 failing to do so would put the landlord in violation of federal law or regulation.

19 Section 10. Unless a failure to do so would put an employer in violation of federal law or
20 federal regulation, no employer may discriminate against a person in hiring, termination, or any
21 term or condition of employment, or otherwise penalize a person, if the discrimination is based
22 upon either of the following:

23 (1) The person's status as a registered qualifying patient or registered designated
24 caregiver; or

(2) A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment.

Section 11. No person may be denied custody of, or visitation or parenting time with, a minor and there is no presumption of neglect or child endangerment for conduct allowed under this Act, unless the person's behavior is such that the behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence.

Section 12. For the purposes of medical care, including organ transplants, a registered qualifying patient's authorized use of marijuana pursuant to this Act shall be considered the equivalent of the authorized use of any other medication used at the direction of a physician, and does not constitute the use of an illicit substance.

Section 13. A registered designated caregiver may receive compensation for costs associated with assisting a registered qualifying patient's medical use of marijuana, if the registered designated caregiver is connected to the registered qualifying patient through the department's registration process. Any such compensation does not constitute the sale of controlled substances.

Section 14. No practitioner is subject to arrest, prosecution, or penalty in any manner, including any civil penalty or disciplinary action by the Board of Medical and Osteopathic Examiners or by any other occupational or professional licensing board, and may not be denied any right or privilege, solely for providing written certifications or for otherwise stating that, in the practitioner's professional opinion, a patient is likely to receive therapeutic benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. However, nothing in this section prevents a professional licensing board from sanctioning a practitioner for failing to properly

1 evaluate a patient's medical condition or otherwise violating the standard of care for evaluating
2 medical conditions.

3 Section 15. No person is subject to arrest, prosecution, or penalty in any manner, and may
4 not be denied any right or privilege, including any civil penalty or disciplinary action by a court
5 or occupational or professional licensing board, for providing a registered qualifying patient or
6 a registered designated caregiver with marijuana paraphernalia for purposes of a qualifying
7 patient's medical use of marijuana.

8 Section 16. No marijuana, marijuana paraphernalia, licit property, or interest in licit property
9 that is possessed, owned, or used in connection with the medical use of marijuana as allowed
10 pursuant to this Act may be seized or forfeited.

11 No person is subject to arrest, prosecution, or penalty in any manner, including any civil
12 penalty or disciplinary action by a court or occupational or professional licensing board, and
13 may not be denied any right or privilege, simply for being in the presence or vicinity of the
14 medical use of marijuana as allowed under this Act, or for assisting a registered qualifying
15 patient with using or administering marijuana.

16 Section 17. A registry identification card, or its equivalent, that is issued under the laws of
17 another state, district, territory, commonwealth, or insular possession of the United States that
18 allows, in the jurisdiction of issuance, a visiting qualifying patient to possess marijuana for
19 medical purposes, has the same force and effect as a registry identification card issued by the
20 department.

21 Section 18. Any cardholder who sells marijuana to a person who is not allowed to use
22 marijuana for medical purposes under this Act shall have his or her registry identification card
23 revoked, and is subject to other penalties for the unauthorized sale of marijuana. The department
24 may revoke the registry identification card of any cardholder who violates this section.

1 Section 19. Not later than one hundred twenty days after the effective date of this Act, the
2 department shall promulgate rules pursuant to chapter 1-26 governing the manner in which the
3 department shall consider petitions from the public to add debilitating medical conditions or
4 treatments to the list of debilitating medical conditions set forth in this Act. In considering such
5 petitions, the department shall include public notice of, and an opportunity to comment in a
6 public hearing upon, the petitions. The department shall, after hearing, approve or deny a
7 petition within one hundred eighty days of its submission. The approval or denial of a petition
8 is a final department action, subject to judicial review. Jurisdiction and venue for judicial review
9 are vested in the circuit court.

10 Section 20. Not later than one hundred twenty days after the effective date of this Act, the
11 department shall promulgate rules pursuant to chapter 1-26 governing the manner in which the
12 department shall consider applications for and renewals of registry identification cards for
13 qualifying patients and designated caregivers. The department's rules shall establish application
14 and renewal fees that generate revenues sufficient to offset all expenses of implementing and
15 administering this Act. The department may establish a schedule of application and renewal fees
16 based upon a qualifying patient's family income. The department may accept donations from
17 private sources in order to offset the application and renewal fees.

18 Section 21. The department shall issue registry identification cards to qualifying patients
19 who submit the following, in accordance with the department's rules:

- 20 (1) Written certification;
- 21 (2) Application or renewal fee;
- 22 (3) Name, address, and date of birth of the qualifying patient, except that if the applicant
23 is homeless, no address is required;
- 24 (4) Name, address, and telephone number of the qualifying patient's practitioner;

- 1 (5) Name, address, and date of birth of each designated caregiver designated, if any, by
2 the qualifying patient;
- 3 (6) A statement signed by the qualifying patient, pledging not to divert marijuana to
4 anyone who is not allowed to possess marijuana pursuant to this Act; and
- 5 (7) A signed statement from the designated caregiver, if any, agreeing to be designated
6 as the patient's designated caregiver and pledging not to divert marijuana to anyone
7 who is not allowed to possess marijuana pursuant to this Act.

8 Section 22. The department may not issue a registry identification card to a qualifying
9 patient who is under the age of eighteen unless:

- 10 (1) The qualifying patient's practitioner has explained the potential risks and benefits of
11 the medical use of marijuana to the custodial parent or legal guardian with
12 responsibility for health care decisions for the qualifying patient; and
- 13 (2) The custodial parent or legal guardian with responsibility for health care decisions
14 for the qualifying patient consents in writing to:
- 15 (a) Allow the qualifying patient's medical use of marijuana;
- 16 (b) Serve as one of the qualifying patient's designated caregivers; and
- 17 (c) Control the acquisition of the marijuana, the dosage, and the frequency of the
18 medical use of marijuana by the qualifying patient.

19 Section 23. The department shall verify the information contained in an application or
20 renewal and shall approve or deny an application or renewal within fifteen days of receiving it.
21 The department may deny an application or renewal only if the applicant did not provide the
22 information required, the applicant previously had a registry identification card revoked for
23 violating this Act, or the department determines that the information provided was falsified.
24 Rejection of an application or renewal is considered a final department action, subject to judicial

1 review. Jurisdiction and venue for judicial review are vested in the circuit court.

2 Section 24. The department shall issue a registry identification card to each designated
3 caregiver, if any, who is named in a qualifying patient's approved application, if the designated
4 caregiver meets the requirements of section 2 of this Act. No qualifying patient may have more
5 than two designated caregivers. The department shall notify any qualifying patient who has
6 designated someone to serve as the qualifying patient's designated caregiver if a registry
7 identification card can not be issued to the designated person. A designated caregiver shall be
8 issued a registry identification card each time the designated caregiver is designated by a
9 qualifying patient. However, no designated caregiver may assist more than five qualifying
10 patients with their medical use of marijuana.

11 Section 25. The department shall issue registry identification cards to qualifying patients and
12 to designated caregivers within five days of approving an application or renewal. Each registry
13 identification card expires one year after the date of issuance, unless the practitioner states in
14 the written certification that the practitioner believes the qualifying patient would benefit from
15 medical marijuana only until a specified earlier or later date, then the registry identification card
16 shall expire on that date. Registry identification cards shall contain all of the following:

- 17 (1) Name, address, and date of birth of the qualifying patient;
- 18 (2) Name, address, and date of birth of each designated caregiver, if any, of the
19 qualifying patient;
- 20 (3) The date of issuance and expiration date of the registry identification card;
- 21 (4) A random twenty digit identification number, containing at least four numbers and
22 at least four letters, that is unique to the cardholder; and
- 23 (5) A photograph, if required by the department.

24 Section 26. A registered qualifying patient shall notify the department of any change of

1 name, address, or designated caregiver, or if the registered qualifying patient ceases to have the
2 debilitating medical condition, within ten days of such change. A registered qualifying patient
3 who fails to notify the department of any of these changes is subject to a civil penalty,
4 punishable by a civil fine of no more than one hundred fifty dollars. If the registered qualifying
5 patient's certifying practitioner notifies the department in writing that either the registered
6 qualifying patient has ceased to suffer from a debilitating medical condition or that the
7 practitioner no longer believes the patient would receive therapeutic or palliative benefit from
8 the medical use of marijuana, the card is null and void upon notification by the department to
9 the qualifying patient.

10 A registered designated caregiver shall notify the department of any change of name or
11 address within ten days of such change. A registered designated caregiver who fails to notify
12 the department of any of these changes is subject to a civil infraction, punishable by a penalty
13 of no more than one hundred fifty dollars.

14 If a registered qualifying patient or registered designated caregiver notifies the department
15 of any change listed in this section, the department shall issue the registered qualifying patient
16 and each registered designated caregiver a new registry identification card with new random
17 twenty digit identification numbers within ten days of receiving the updated information and a
18 ten dollar fee. If a registered qualifying patient ceases to be a registered qualifying patient or
19 changes a registered designated caregiver, the department shall notify the designated caregiver
20 within ten days. The registered designated caregiver's protections under this Act as to that
21 qualifying patient expires ten days after notification by the department.

22 If a cardholder loses his or her registry identification card, the cardholder shall notify the
23 department and submit a ten dollar fee within ten days of losing the card. Within five days after
24 such notification, the department shall issue a new registry identification card with a new

1 random identification number.

2 Section 27. Possession of, or application for, a registry identification card does not constitute
3 probable cause or reasonable suspicion, nor does it support the search of the person or property
4 of the person possessing or applying for the registry identification card.

5 Section 28. Any application or supporting information submitted by a qualifying patient or
6 designated caregiver, including information regarding designated caregivers and practitioners,
7 is confidential. The department shall maintain a confidential list of the persons to whom the
8 department has issued registry identification cards. Individual names and other identifying
9 information on the list are confidential and are not subject to disclosure, except to authorized
10 employees of the department as necessary to perform official duties of the department.

11 Section 29. The department shall verify to law enforcement personnel whether a registry
12 identification card is valid, without disclosing more information than is reasonably necessary
13 to verify the authenticity of the registry identification card. The department shall establish a
14 secure web-based system; an unstaffed, automated twenty-four-hour toll-free telephone number;
15 or both, which law enforcement personnel can use to verify registry identification cards outside
16 of business hours. The twenty-four-hour number or web-based system shall allow law
17 enforcement to enter in a registry identification number to determine whether or not the number
18 corresponds with a current, valid identification card. The system may disclose the name and
19 photograph of the cardholder, but may not disclose the address. Searches in the twenty-
20 four-hour system can only be conducted by registry identification number.

21 Section 30. No person, including an employee or official of the department or another state
22 agency or local government, may breach the confidentiality of information obtained pursuant
23 to this Act. A violation of this provision is a Class 1 misdemeanor. Notwithstanding this
24 provision, department employees may notify law enforcement about falsified or fraudulent

1 information submitted to the department, so long as the employee who suspects that falsified
2 or fraudulent information has been submitted confers with the employee's supervisor, and both
3 agree that circumstances exist that warrant reporting.

4 Section 31. The department shall submit to the Legislature an annual report that does not
5 disclose any identifying information about qualifying patients, designated caregivers, or
6 practitioners, but does contain, at a minimum, all of the following information:

- 7 (1) The number of applications and renewals filed for registry identification cards;
- 8 (2) The number of qualifying patients and designated caregivers approved in each
9 county;
- 10 (3) The nature of the debilitating medical conditions of the qualifying patients;
- 11 (4) The number of registry identification cards revoked; and
- 12 (5) The number of practitioners providing written certifications for qualifying patients.

13 Section 32. If a state or locally funded law enforcement agency encounters a person who,
14 during the course of the investigation, credibly asserts that he or she is a registered qualifying
15 patient or registered designated caregiver, the law enforcement agency may not provide any
16 information from any marijuana-related investigation of the person to any law enforcement
17 authority that does not recognize the protection of this Act and any prosecution of the person
18 for a violation of this Act shall be conducted pursuant to the laws of this state.

19 Section 33. The application for a qualifying patient's registry identification card shall include
20 a question asking whether the patient wants the department to notify him or her of any clinical
21 studies regarding marijuana's risk or efficacy that seek human subjects. The department shall
22 inform those patients who answer in the affirmative of any such studies the department is
23 notified of that will be conducted in the United States.

24 Section 34. This Act does not permit any person to do any of the following, nor does it

1 prevent the imposition of any civil, criminal, or other penalties for any such actions:

2 (1) Undertake any task under the influence of marijuana, if doing so would constitute
3 negligence or professional malpractice;

4 (2) Possess marijuana, or otherwise engage in the medical use of marijuana:

5 (a) In a school bus;

6 (b) On the grounds of any preschool or primary or secondary school; or

7 (c) In any correctional facility.

8 (3) Smoke marijuana:

9 (a) On any form of public transportation; or

10 (b) In any public place.

11 (4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or
12 motorboat while under the influence of marijuana. However, a registered qualifying
13 patient is not to be considered to be under the influence of marijuana solely because
14 of the presence of metabolites or components of marijuana that appear in insufficient
15 concentration to cause impairment;

16 (5) Use marijuana if that person does not have a debilitating medical condition.

17 Section 35. Nothing in this Act requires:

18 (1) A government medical assistance program or private health insurer to reimburse a
19 person for costs associated with the medical use of marijuana;

20 (2) Any person or establishment in lawful possession of property to allow a guest, client,
21 customer, or other visitor to use marijuana on or in that property. This Act does not
22 limit a person or entity in lawful possession of property, or an agent of such person
23 or entity, from expelling such visitor who uses marijuana without permission from
24 the person's property and from seeking civil and criminal penalties for the

1 unauthorized use of marijuana on the property; or

- 2 (3) An employer to accommodate the ingestion of marijuana in any workplace or any
3 employee working while under the influence of marijuana. However, a qualifying
4 patient is not to be considered to be under influence of marijuana solely because of
5 the presence of metabolites or components of marijuana that appear in insufficient
6 concentration to cause impairment. This Act does not limit an employer's ability to
7 discipline an employee for ingesting marijuana in the workplace or working while
8 under the influence of marijuana.

9 Section 36. Fraudulent representation to a law enforcement official of any fact or
10 circumstance relating to the medical use of marijuana to avoid arrest or prosecution is a Class
11 2 misdemeanor.

12 Section 37. Except as provided in section 34 of this Act, a patient may assert the medical
13 purpose for using marijuana as a defense to any prosecution of an offense involving marijuana
14 intended for the patient's medical use, and this defense is valid if the evidence shows that:

- 15 (1) A practitioner has stated that, in the practitioner's professional opinion, after having
16 completed a full assessment of the patient's medical history and current medical
17 condition made in the course of a bona fide practitioner-patient relationship, the
18 patient is likely to receive therapeutic or palliative benefit from the medical use of
19 marijuana to treat or alleviate the patient's debilitating medical condition or
20 symptoms associated with the patient's debilitating medical condition;
- 21 (2) The patient and the patient's designated caregiver, if any, were collectively in
22 possession of a quantity of marijuana that was not more than was reasonably
23 necessary to ensure the uninterrupted availability of marijuana for the purpose of
24 treating or alleviating the patient's debilitating medical condition or symptoms

1 associated with the patient's debilitating medical condition;

2 (3) The patient was engaged in the acquisition, possession, cultivation, manufacture, use,
3 or transportation of marijuana, paraphernalia, or both, relating to the administration
4 of marijuana solely to treat or alleviate the patient's debilitating medical condition or
5 symptoms associated with the patient's debilitating medical condition; and

6 (4) If any marijuana plants were involved, the plants were kept in an enclosed area
7 equipped with locks or other security devices that permit access only by the patient.

8 A person may assert the medical purpose for using marijuana in a motion to dismiss, and
9 the charges shall be dismissed following an evidentiary hearing in which the person shows the
10 elements listed in this section.

11 If a patient demonstrates the patient's medical purpose for using marijuana pursuant to this
12 section, except as provided in section 34 of this Act, the patient and the patient's designated
13 caregiver are not subject to disciplinary action by an occupational or professional licensing
14 board or forfeiture of any interest in or right to nonmarijuana, licit property for the patient's use
15 of marijuana for medical purposes.

16 If the department fails to adopt rules to implement this Act within one hundred twenty days
17 of the effective date of this Act, a qualifying patient may commence an action in circuit court
18 to compel the department to perform the actions mandated pursuant to the provisions of this
19 Act.